

1 STATE OF MINNESOTA DISTRICT COURT  
 2 COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

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4 De-Aunteze Lavion Bobo, )  
 )  
 5 Petitioner, ) **TRANSCRIPT OF PROCEEDINGS**  
 ) D.C. File 27-CR-06-087114  
 6 vs. )  
 )  
 7 State of Minnesota, )  
 )  
 8 Respondent. )

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10 The above-entitled matter came duly on for hearing  
 11 before the Honorable Susan Robiner, one of the judges of  
 12 the above-named court, Minneapolis, Minnesota, on the  
 13 **16th** day of **November, 2020.**

14  
 15 APPEARANCES:

16 **ZACHARY LONGSDORF, ESQ.**, Attorney at Law, appeared  
 17 via Zoom, on behalf of the Petitioner.

18 **KACY WOTHE, ESQ.**, Assistant Hennepin County  
 19 Attorney, appeared via Zoom, on behalf of the  
 20 Respondent.

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1                   **(The following proceedings were had in**  
2                   **open court:)**

3                   THE CLERK: Your Honor, we're calling  
4                   Court File No. 27-CR-06-087114.

5                   The parties present, please state your  
6                   names for the record.

7                   MS. WOTHE: Casey Wothe for the State;  
8                   K-a-c-y, W-o-t-h-e.

9                   MR. LONGSDORF: Zack Longsdorf on behalf  
10                  of De-Aunteze Bobo. Longsdorf is spelled  
11                  L-o-n-g-s-d-o-r-f.

12                 THE COURT: Good morning, Mr. Longsdorf,  
13                  and good morning, Ms. Wothe, and good morning,  
14                  Madam Court Reporter.

15                 We are here on a -- I guess what I would  
16                  call a -- well, it's a hearing taking place  
17                  between the hearing that took place last week in  
18                  which Mr. James testified remotely and the  
19                  hearing that is scheduled for I believe later in  
20                  the week in which the remaining persons will  
21                  testify. I believe I misspoke, let me get the  
22                  date correct. Yes, looks like we have it  
23                  scheduled for Thursday, November 19. And it made  
24                  sense to have a quick hearing between the two  
25                  evidentiary hearings in order to address any

1 motions *in limine* and give the parties an  
2 opportunity to submit updated witness and exhibit  
3 lists in light of Mr. James's testimony.

4 The Court received the petitioner's  
5 amended witness list dated November 12th, and the  
6 petitioner's amended exhibit list also dated  
7 November 12th. And the Court also received the  
8 State's motion *in limine* dated November 13. And  
9 before I hear argument regarding the State's  
10 motions *in limine*, I guess I just want to ask  
11 whether any of the issues raised by the motions  
12 *in limine* have been resolved between the parties.

13 MS. WOTHE: Your Honor, we have not had  
14 the opportunity to discuss them so no.

15 THE COURT: All right. All right. Then  
16 unless you folks have a different idea, I would  
17 like to simply start with the State's motions *in*  
18 *limine* and work through them. I may be able to  
19 rule on some of them today; I may take some under  
20 advisement.

21 The first motion *in limine* is a motion  
22 to strike testimony offered by Mr. James at the  
23 evidentiary hearing last week. And, Ms. Wothe,  
24 you may proceed.

25 MS. WOTHE: Thank you, Your Honor. The

1 purpose of the evidentiary hearing granted by the  
 2 Court was for Sam James to come in and testify  
 3 consistent with his November 2018 affidavit which  
 4 was allegedly to offer information that he



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13 Bobo is  
 14 Mr. James

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23 application for post-conviction relief which this  
 24 Court denied relief as it relates to because  
 25 simply the allegation that the defendant was with

1 Ms. Armstrong the night of the murder does not  
 2 meet the test for newly discovered evidence  
 3 because nothing would have prevented the  
 4 defendant from offering evidence to this effect



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if we were in front of a jury, I would have, but  
 because this is a matter where we are before the  
 Court and we can trust the Court to ultimately

1 make the right decisions about what is ultimately  
2 admissible into the record when finally deciding  
3 this issue, I thought simply for purposes of ease  
4 and convenience given the Zoom format that this



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23 that it means that he was, if Mr. Bobo wasn't the

24 one who did it that maybe Sam James was. And in

25 the position we're in where I guess we're looking

1 at sort of the 804(b)(3) factors to try to get  
2 Sam James's affidavit and the other evidence in,  
3 I do think that is corroborating evidence that  
4 goes toward that.



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23 Honor does leave that testimony as part of the  
24 record that's simply going to go to the weight  
25 that Your Honor should afford it. And given the

1 lack of information as to how Mr. James came to  
 2 know this information, I would argue ultimately  
 3 that's still in the record that the Court should  
 4 afford it minimal weight.



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23 was with because he was there.  
 24 THE COURT: Okay. Thank you. I want to  
 25 go ahead and move forward to the second motion *in*



1                   *limine*. I tell you what I'm doing on this first  
2                   one, I'm going to defer ruling on it and move on  
3                   to the second motion *in limine*.

4                   The second motion *in limine* is seeking



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# MINNESOTA JUDICIAL BRANCH

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MR. LONGSDORF: Thank you, Your Honor.

Ms. Armstrong's testimony would be offered

essentially to corroborate some of what Mr. James

1 said, which I think goes to the 804(3)(b), but  
2 also initially it was offered, if we're looking  
3 at this under either Renier or Larrison, her  
4 testimony was offered because what we believe



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# MINNESOTA JUDICIAL BRANCH

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THE COURT: Go ahead. Well, wait a  
second. Talking about Nikisha Armstrong, why  
would she be considered an unavailable witness?

1 Are we talking about -- isn't 804(b)(3) only  
2 related to unavailable witnesses?

3 MS. WOTHE: Yes, Your Honor. But as I  
4 understand it, defense wants to offer her



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# MINNESOTA JUDICIAL BRANCH

factor which I think would be relevant to  
Ms. Armstrong's testimony is whether other  
evidence corroborates the facts in the hearsay

1 statement. And there is such a minimal  
 2 connection between what she would offer and what  
 3 Mr. James's hearsay statements are, Your Honor,  
 4 that there is -- this Court should afford little



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20 think, corroborate what Sam James has said or  
 21 what is in these hearsay statements that we're  
 22 offering in that if Mr. Bobo was with her he  
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1 couldn't have been with -- with Leonard Slaughter  
 2 or in the vehicle that was outside of Stand Up  
 3 Frank's, so I do think it does offer some level  
 4 of corroboration.

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23 THE COURT: Well, looking at -- looking  
 24 at her affidavit and comparing it with  
 25 Mr. James's affidavit, and for that matter,

1 Mr. James's testimony last week. Well, let's  
 2 stick with Mr. James's testimony last week. He  
 3 testified that he was in this house with  
 4 Ms. Armstrong, petitioner Bobo, and I believe



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a three-parter, it's denying the admission of  
 three items. One is the James affidavit. The  
 second is testimony from Investigator Grostyan,

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presumably regarding obtaining the James's  
 affidavit. And, third, recordings of jail calls  
 between James and R.D. And presumably that would  
 be -- well, those are apparently some jail calls



# MINNESOTA JUDICIAL BRANCH

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surrounding its creation lack the circumstantial  
 guarantees of trustworthiness in order to be  
 admissible under 804(b)(3).

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Turning first to whether or not he was actually unavailable, Your Honor. The standard is the that the declarant persists in refusing to testify concerning a subject matter of the



# MINNESOTA JUDICIAL BRANCH

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needs to make a finding that the -- that the statement has those circumstantial guarantees of trustworthiness in order to be admissible.



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I set forth the six factors that this Court -- or the six factors that this Court should consider in its motions *in limine* and, frankly, Your Honor, all six factors weigh



# MINNESOTA JUDICIAL BRANCH

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He then testified at grand jury again consistent that Mr. Bobo was the driver in this murder. And then since trial his statements have flipped to

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be then that the defendant is innocent and that  
it was police who came up with this narrative of  
having Mr. James create false testimony just to  
get some person off of the street. Testimony of



# MINNESOTA JUDICIAL BRANCH

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testified against a fellow gang member that there  
are inherent pressures on him to now do good by  
Mr. Bobo and try to get him out of this.

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To the fourth factor, I think that same analysis applies. I think Mr. James has every reason in the world to fabricate his 2018 affidavit. It's again because him being not only



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# MINNESOTA JUDICIAL BRANCH

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So for all those reasons we would ask that the Court deny admission of the affidavit and testimony.

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And, Your Honor, would you like me to address the recordings now or would you rather counsel respond to those first two?

THE COURT: Thank you. I'd like to have



# MINNESOTA JUDICIAL BRANCH

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been at the scene of the crime. But if we actually look at what was testified to, the (inaudible) who was the surviving victim of the

1 shooting said that -- he testified that it was an  
 2 SUV that had side-by-side back doors. He  
 3 testified it was an SUV that had tinted windows,  
 4 and he testified that it was a fancy -- or,



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23 were no broken windows or anything on the vehicle  
 24 that he saw. So the vehicle evidence, I think,  
 25 you know, Sam James says that he could have, you

1 know, he had three vehicles and could have been  
 2 there. Really if we look at the testimony I  
 3 don't think that the vehicles support the idea  
 4 that Mr. Bobo was actually there which gives rise



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23 should let this in because somehow it makes it a  
 24 little more likely that it's not Mr. Bobo but  
 25 that's not really the same thing as it's Mr.

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James.

MR. LONGSDORF: Well, from Mr. Bobo's perspective, Your Honor, they go hand in hand, that if Mr. James was not truthful about it being



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# MINNESOTA JUDICIAL BRANCH

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that it wasn't Bobo. But that showing that it's not Bobo really doesn't get you any closer to showing that it is James which is the only new

1 piece of information. That's what I'm struggling  
2 with.

3 MR. LONGSDORF: I think in part it does  
4 because Mr. James admitted during his testimony



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23 that, Your Honor, and our position is we believe  
24 that it does corroborate that.

25 Another piece of evidence we believe



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that corroborates the fact that it was Sam James  
and not Mr. Bobo is that Sam James himself did  
admit that he was at Sherry Edwards' home and he  
saw Mr. Bobo with Nikisha -- I think he used the



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# MINNESOTA JUDICIAL BRANCH

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statements themselves and why they're more, I  
believe, trustworthy in this case is that in 2012

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the Court was in a position where it was  
Demetrius Tyson and then an absent Jesse Clark,  
who the Court had to take the statements through.  
In this case, we have an investigator and then we



# MINNESOTA JUDICIAL BRANCH

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Mr. Longsdorf's points, go ahead, but otherwise  
you can go forward to the -- to your motion  
related to the jail calls.

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MS. WOTHE: Thank you, Your Honor. I'll  
move forward to the motion to the jail calls.  
Defense is moving to admit three separate phone  
calls between -- made by Sam James out of the



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# MINNESOTA JUDICIAL BRANCH

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the scope of this evidentiary hearing, we would  
ask to preclude the April 2nd call.

Turning to the July 16th calls. Those

1 are back-to-back phone calls, Your Honor. And in  
 2 the second one, Mr. James does tell the reporter  
 3 that he was the shooter in this drive-by murder  
 4 -- or excuse me, not the shooter, the driver. He



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14 **MINNESOTA** police,  
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22 frankly, ridiculous narrative about what actually  
 23 happened. And compared to Mr. James's record of  
 24 statements as a whole, the simple statement to  
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1 the police about being the driver, that doesn't  
2 make it have those guarantees of trustworthiness  
3 when you look at the record as a whole.

4 So for those reasons, again, we would



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# 20 MINNESOTA 21 JUDICIAL 22 BRANCH

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25 is that there's an April 2nd call and it's Sam

James makes that call and he talks a little bit

about why it is that he wanted to come forward

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and why he wants to set the record straight about  
the call. And so I think that one is relevant  
and it does -- it goes directly toward whether  
there's corroborating circumstances which is why



# MINNESOTA JUDICIAL BRANCH

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what happened that night to make it look like

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Mr. Bobo when it came time for him to try to get  
the heat off from himself. And I think what kind  
of sets the recordings apart, and I mentioned  
this earlier, from any other 804(b)(3) case that



# MINNESOTA JUDICIAL BRANCH

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I'd be happy to forward those to Court and  
counsel.

MR. LONGSDORF: I did include

1 transcripts with the recordings that I sent as  
2 well.

3 THE COURT: You both independently  
4 created transcripts?



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# MINNESOTA JUDICIAL BRANCH

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23 is correct. Are Investigators Grostyan -- and  
24 now I'm talking about your proposed witnesses,  
25 Mr. Longsdorf. You've got Grostyan and an



1 Investigator Dodge. And judging by your  
2 descriptions of their testimony, I've been  
3 assuming that they're being -- they would be  
4 coming forward, I guess, to lay foundation for



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23 MR. LONGSDORF: The primary purpose  
24 would be to lay the foundation, the fact that he  
25 met with Sam James, he identified him, he looked

1 at a picture of him, to verify the affidavit. So  
2 I'm uncertain if we would call him if the  
3 affidavit wasn't in play.

4 THE COURT: Okay. Well, I guess if that



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23 August 6, 2020 order.

24 And with regard to the motion *in limine*  
25 number three, which relates to Mr. James's

1 affidavit and the jail calls, I am -- I'm also  
 2 deferring on those. And I anticipate that I'm  
 3 hoping I will -- you know, I'll address this  
 4 before Thursday. I might just -- if I make a



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23 appropriately focused on the hearsay analysis and  
 24 -- but there's also that background foundation  
 25 analysis, and it sounds like that's getting --

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that you've agreed on that with regard to the  
jail calls if they survive a hearsay analysis.

All right. Anything else?

MS. WOTHE: Nothing additional from the



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# MINNESOTA JUDICIAL BRANCH

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are adjourned.

MS. WOTHE: Thank you, Your Honor.

(Proceedings concluded.)

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